TAIWAN

TRADE SUMMARY

The United States trade deficit with Taiwan reached $16.1 billion in 1999, up 7.5 percent from 1998. U.S. exports in 1999 were $19.1 billion, up 5.3 percent from 1998. Corresponding U.S. imports from Taiwan were $35.2 billion, up 6.3 percent. Taiwan is currently the 8th largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Taiwan in 1998 was $4.9 billion. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

OVERVIEW

Market access in Taiwan was significantly improved when the U.S. and Taiwan reached agreement in February 1998 on the market access elements of Taiwan's WTO accession package. The agreement includes both immediate market access and phased-in commitments, and will provide substantially increased access for U.S. goods, services, and agricultural exports to Taiwan. The agreement provides improved access to the automobile, telecommunications, government procurement, beer, spirits, and wine markets.

Significantly, it also provides for annual imports from the United States of previously-banned pork, chicken, and variety meat products. Relevant Taiwan authorities recently announced the availability of these meat product quotas for the year 2000.

Most of the trade barriers described in this section have been resolved through extensive negotiations; however, the barriers will not be eliminated until Taiwan becomes a member of the World Trade Organization.

IMPORT POLICIES

Tariffs

Many agricultural tariffs were cut as part of tariff reductions in 1995 and 1998. U.S. exporters nevertheless consider that many of the tariff reductions were not deep enough to have real commercial effect, and that the present tariff structure on these items, as well as other agricultural tariffs, continue to be a significant barrier to exports. Some examples include: fresh fruits (40-50 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (11-15 percent). However, many of these tariffs will be lowered in the context of Taiwan's accession to the WTO.

Tariffs on fish products are of growing concern to U.S. industry. Taiwan was the ninth largest fishery export market for the United States in 1999. U.S. fish exports to Taiwan last year were $41 million, while the value of imports from Taiwan totaled $207 million. Taiwan's high tariffs on fish were the major reason for the imbalance. Tariffs exist on virtually all seafood products, frequently in the range of 30-50 percent. Reduction of tariffs on fishery products would create important U.S. export opportunities for fishery products including frozen squid, fresh sea urchin roe, frozen hake and whiting, Pacific and Atlantic mackerel, frozen halibut, fresh and frozen lobster, preserved anchovy, whiting surimi, fresh bluefin tun, frozen shrimp, fresh and frozen crabs, clams, molluscs and crustaceans, frozen Alaska pollock, frozen cod, frozen mullet, and frozen Greenland turbot.

In addition, U.S. agricultural exporters continue to report instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, particularly with regard to meat products. Such a practice negates some of Taiwan's tariff cuts.

These instances are being pursued with the Taiwan authorities.

In May 1998, Taiwan began implementing tariff cuts on 1,130 items, many of specific interest to U.S. industry, such as buses, agricultural products, including fruits and vegetables, and camera film. Tariff reductions on 15 agricultural products, negotiated as part of the U.S.-Taiwan bilateral WTO agreement, took effect in July 1998, and were extended in July 1999. In February 1999, Taiwan waived tariffs on 15 aircraft components as part of plans to accede to the WTO Agreement on Trade in Civil Aircraft. An additional 777 items are slated for tariff cuts pending legislative approval. Taiwan's current average nominal tariff rate is 8.2 percent; the trade-weighted rate is 3.1 percent, both down slightly from 1998.

Taiwan is a participant in the Information Technology Agreement (ITA). Under the ITA, Taiwan has agreed to phase out tariffs on information technology products. The first tranche of ITA-related cuts was implemented on a temporary basis on July 1, 1997 under administrative order. A second tranche went into effect on January 1, 1998. While the vast majority of tariffs on these products are phased out as of the year 2000, for some products reductions will not be completed until 2002. The administrative order implementing these cuts will have to be renewed annually until permanent reductions are enacted in connection with Taiwan's accession to the WTO.

Licensing and Other Restrictions

Of some 10,200 official import product categories, nearly 86 percent are completely exempt from any controls. 991 categories are still "regulated" and require approval from relevant authorities based on the qualifications of the importer, the origin of the good, or other factors. Another 279 require import permits from the Board of Foreign Trade or pro forma notarization by banks. Imports of 270 categories are "restricted," including ammunition and some agricultural products. These items can only be imported under special circumstances, and are thus effectively banned.

Quarantine requirements, which are not based on sound science, also block imports of certain plant and animal products. Imports of rice, peanuts, adzuki beans, chicken (fresh and frozen), certain cuts of pork, animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. However, Taiwan has agreed to remove these bans upon accession to the WTO. Moreover, under the U.S.-Taiwan WTO market access agreement reached in February 1998, limited market access for U.S. chicken, pork, and variety meat products is provided under a system of annual quotas. However, subsequent to the implementation of these quotas, Taiwan authorities used reclassification in order to ban or limit importation of two pork products. As a result of product reclassification, frozen bacon imports are now banned, and some pork bone product imports are limited by quotas. Both of these products could be imported in unrestricted quantities prior to reclassification.

In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a *de facto* ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. Motorcycles with engines larger than 150cc likewise require a special permit and are thus effectively banned from importation. For some products for which licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health (DOH) for medical equipment, the Board of Foreign Trade or the Provincial Department of Agriculture and Forestry for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities. Local content requirements in the automobile and motorcycle industries will be eliminated as part of Taiwan's WTO accession.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods, and Taiwan often fails to notify its trading partners of changes in sanitary and phytosanitary (SPS) import regulations. This is despite pledges to abide by international norms as embodied in the WTO Agreement on Application of SPS Measures. In 1999, however, Taiwan agreed to accept meat and poultry imports from plants approved by the USDA Food Safety Service (FSIS), and agreed that FSIS-certified exports are eligible for importation into Taiwan. Furthermore, in 1999, Taiwan agreed to accept Codex, and some cases U.S., pesticide residue standards for imported fruits and vegetables in those cases in which Taiwan's chemical regulatory agencies have not yet established Taiwan standards.

Registration and approval procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of long-standing complaints by U.S. firms. Foreign medical device manufacturers must re-register second or third generation versions of previously approved products, and the Taiwan Department of Health also requires the registration of individual products instead of entire product lines.

For all but new chemical entities, pharmaceutical companies are still not allowed to import drugs which are produced using multi-site sourcing. Moreover, pharmaceutical companies claim that clinical trial requirements in Taiwan for drugs that have been approved in other major markets add 2-3 years to the approval time. In 1998, however, Taiwan authorities began a two-year phase-out of clinical trials as part of the registration process for new drugs. This initiative, once fully implemented, will significantly reduce regulatory burdens on pharmaceutical firms.

Department of Health authorities continue to require the submission of detailed plant master files (PMF) as part of the registration and approval process for new drugs. U.S. industry has called for submission of U.S. FDA Establishment Inspection Reports, ISO-13485 certificates, and free sales certificates as a means to satisfy the PMF requirement. This would bring the PMF compliance for new drugs into line with Taiwan's new PMF requirement for U.S.-made medical devices.

Other trade barriers facing U.S. pharmaceutical and medical device makers are detailed below under "Other Barriers."

In 1997, the Taiwan authorities promulgated new electromagnetic compatibility (EMC) standards for computer and other electronic goods which threatened to disrupt of U.S. computer exports to Taiwan. In response, in March 1999 a mutual recognition agreement (MRA) designed to eliminate duplicate testing of information technology equipment was signed. According to the terms of the MRA, certain Taiwan exports to the United States previously tested for electromagnetic conformity in labs recognized by Taiwan authorities will no longer require duplicate inspections in a U.S. lab. Reciprocal treatment will likewise be accorded similar U.S. products imported into Taiwan. Relevant U.S. agencies and their Taiwan counterparts are jointly implementing operating procedures according to the principles of the MRA, including nominating certified labs for mutual accreditation.

GOVERNMENT PROCUREMENT

Problems encountered by U.S. firms in performing government contracts in Taiwan are serious and constitute significant trade barriers. Despite recent reforms, access to Taiwan's estimated $10 billion annual public construction market remains problematic. Some major international contractors will no longer undertake significant contracts in Taiwan.

In connection with its planned accession to the WTO, Taiwan has agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bid process and eliminate overt discrimination between local and foreign bidders on covered contracts.

A new Government Procurement Law (GPL) went into effect in May 1999, but will not be fully applicable to foreign bidders until Taiwan's accession. In fact, individual procuring entities *may* set forth separate procedures for foreign and domestic bidders except where "governed by the rules set forth in the treaties or agreements to which [Taiwan] is a party." Until recently, U.S. firms appeared to view the GPL as a positive step forward. However, some U.S. companies have recently reported that procuring entities are using the GPL as a tool to further entrench difficult tender terms and conditions. That situation arises from the fact that the GPL gives procuring entities wide latitude in determining tender specifications.

Municipal governments in particular have been notably arbitrary in dealing with foreign contractors. The most common pattern of difficulty consists of frequent and unreasonable change orders introduced during performance of the contract. Performance bonds are forfeited and contracts canceled when foreign construction companies are unwilling to accommodate substantially increased costs within the originally agreed payment. Perhaps the most consistent complaint made by U.S. companies involves unfair terms and conditions required by the particular procuring entity. Specific problem areas include unlimited contingent liability; unreasonably high liquidated damages provisions; limited right to protest, or be paid for, work order changes. Other problems include short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on projects.

Lack of timely and effective arbitration procedures prevent satisfactory resolution of contract disputes. In 1998, in response to U.S. requests, Taiwan made operational a dispute settlement mechanism under the direction of the sub-cabinet level Public Construction Commission (PCC). Under this mechanism, bidders can formally protest alleged improprieties which occur during the bidding process. The PCC has the power to either cancel or order amendments to tender procedures when it finds that a protest is justified. Companies are often reluctant to utilize this process, however, for fear of losing future contract opportunities.

U.S. firms are increasingly complaining that both procuring entities and the Public Construction Commission give unfair treatment to foreign firms. In one case, the procuring entity allowed a local company not meeting the tender requirements to bid, to the detriment of a qualifying U.S. firm. In other instances, the tender specifications appear to be written in favor of a local firm, to the disadvantage of foreign competitors. In other cases, deadlines are extended for local companies, but have been applied strictly to foreign firms. In perhaps the worst case, a local company obtained a ruling from the PCC that a tender, which only a U.S. world-leading high technology company could meet, should be canceled and re-tendered with lower qualification standards. It is estimated that another practice, the requirement that most public enterprises and administrative agencies must procure locally if the goods and services are available locally, if eliminated in the telecommunications sector, would provide U.S. firms an additional $100 million in annual revenue.

There is also some concern that Taiwan may be expanding the scope of offset provisions through "Industrial Cooperation Programs." A key example is the Aeronautics and Space Development Program, which mandates industrial cooperation and aerospace technology transfers for major government procurements.

Consultations with the Taiwan authorities on government procurement barriers are planned for March 2000.

EXPORT SUBSIDIES

Taiwan makes available an array of direct and indirect subsidy programs to farmers, ranging from financial assistance to guaranteed purchase prices higher than world prices. It also provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Some of these programs may have the effect of subsidizing exports. Taiwan has notified the WTO of these programs, and as part of its WTO accession, is amending or abolishing any subsidy programs deemed inconsistent with WTO principles.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Citing persistent enforcement problems, the United States put Taiwan back on the Special 301 Watch List in August, 1998. Although Taiwan has enacted laws and policies designed to improve intellectual property protection, enforcement remains problematic. A key problem in Taiwan's IPR enforcement is its weak judicial system. Taiwan judges are often inadequately trained in IPR issues, and in the past have made a variety of questionable procedural decisions in patent and copyright infringement cases. In 1999, 43 percent of all infringing imports seized by U.S. Customs came from Taiwan, making it the largest source of counterfeit goods last year. The U.S. is discussing these problems with Taiwan on a regular basis, and some improvement has occurred. Nevertheless, more remains to be done.

The United States is particularly concerned about inadequate enforcement efforts in the face of continued production and export of counterfeit U.S. software, video games, and other optical media. To address these concerns, the Taiwan authorities in February 1999 issued a new directive requiring only the use of legal software by Taiwan authorities. They also required that as of July 1, 1999, all optical media products produced in Taiwan, including CD's, VCD's, CD-ROM's and DVD's, are required to bear source identification (SID) codes. At the same time, Bureau of Standards, Metrology and Inspection inspectors were authorized to perform random factory visits to ensure compliance. Further, to prevent the illegal production of counterfeit computer chips at Taiwan semiconductor factories, the Taiwan Semiconductor Industry Association began implementation of a voluntary computer chip-marking program on July 1, 1999. However, problems remain in that the SID code requirement is not being adequately enforced for all CDs, and chip marking has not been made mandatory under the Commodity Labeling Act.

Another problem area is the failure of Taiwan's judicial system to recognize foreign powers of attorney giving local representatives of foreign firms effective rights to file criminal prosecutions in intellectual property infringement cases. Burdensome power of attorney requirements now constitute a serious impediment to foreign access to the Taiwan judicial system in intellectual property cases.

Revised Copyright, Patent, and Trademark Laws were passed by Taiwan in 1997 to bring its IPR legal structure into conformity with the WTO TRIPS agreement. However, only the Trademark Law and certain provisions of the Copyright Law have been implemented. The new Copyright Law, which will be fully implemented upon WTO accession, will extend retroactive copyright protection to 50 years. Despite these changes, owners of U.S. copyrights and trademarks have experienced difficulty in obtaining and enforcing rights in Taiwan.

Another area of concern is the lack of adequate protection for the packaging, configuration, and outward appearance of products, an area of IPR known as "trade dress." Despite provisions in Taiwan's Fair Trade Law designed to protect unregistered marks and other packaging features, copying of U.S. products by local products which are misleading in appearance remains a problem.

SERVICES BARRIERS

Financial Services

The Securities and Exchange Law was amended in May 1997 to remove restrictions on employment of foreigners by securities firms, effective upon Taiwan's accession to the WTO. In early 1999, the limit on foreign ownership in listed companies was raised from 30 percent to 50 percent. For qualified foreign institutional investors, restrictions on capital flows have been removed, although they are still subject to limits on portfolio investment. Foreign individual investors are subject to some limits on their portfolio investment and restrictions on their capital flows.

In June 1997, the annual limit on a company's non-trade outward (or inward) remittances was raised from $20 million to $50 million. Inward/outward remittances unrelated to trade by individuals are subject to an annual limit of $5 million. There are no limits on trade-related remittances. NTD-related derivative contracts may not exceed one-third of a bank's foreign exchange position. To stabilize the foreign exchange market in the wake of regional financial turmoil, the CBC closed the non-deliverable forward (NDF) market to domestic corporations in May 1998; the NDF market remains open to foreign companies.

In May 1997, the financial authorities announced that insurance companies in principle would be allowed to set some premium rates and policy clauses without prior approval from regulators. Insurance companies are still required to report such rates and clauses. In July 1995, Taiwan removed a prohibition against mutual insurance companies; as of late 1999, however, authorities had not issued implementing regulations.

Legal Services

Foreign lawyers may not operate legal practices in Taiwan, but may set up consulting firms or work with local law firms. Qualified foreign attorneys may, as consultants to Taiwan law firms, provide legal advice to their employers only. Legislation was passed in May, 1998 to permit the eventual establishment of foreign legal partnerships. However, last minute changes to the law prevented it from achieving this purpose. Taiwan authorities subsequently agreed to delay implementation of the law and to make other commitments which will permit foreign attorneys to establish partnerships either upon Taiwan's accession to the WTO, or upon implementation of the new law, whichever occurs first.

Films

While restrictions have been eased recently, Taiwan continues to limit the importation and showing of foreign films. Imports of foreign film prints are limited to 58 per title. The number of theaters in any municipality allowed to show the same foreign film simultaneously is limited to 18, and multi-screen theaters are only allowed to show a single title on up to three screens simultaneously. Taiwan has pledged to abolish these restrictions upon accession to the WTO.

INVESTMENT BARRIERS

While Taiwan continues to liberalize its financial sector, limits remain on foreign ownership in listed companies. For qualified foreign institutional investors, restrictions on capital flows have been removed, although they are still subject to limits on portfolio investment. Foreign individual investors are subject to some limits on their portfolio investment and restrictions on their capital flows.

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in key industries such as agriculture, basic wire line telecommunications, broadcasting, and liquor and cigarette production. Wire line telecommunications will be gradually liberalized beginning in early 2000, and will be completely liberalized by July, 2001 under Taiwan's WTO commitments. In fact, the cap on foreign equity in telecommunications companies was raised from 20 percent to 59.9 percent in January 2000. Liquor and cigarette production will be fully liberalized by 2004. Foreign ownership in airlines is limited to 33 percent, but this ceiling may be raised to 50 percent under pending legislation.

ANTI-COMPETITIVE PRACTICES

In the mobile telephone market, U.S.-invested mobile service providers believe the pricing practices of former monopoly provider Chunghwa Telecom are unfair and predatory. They argue that Chunghwa has repeatedly lowered mobile charges in order to stifle competition from new entrants by cross-subsidizing its mobile operations with profits from other business areas. In October, the Taiwan Fair Trade Commission agreed, and ruled against a new Chunghwa service. The FTC found that Chunghwa's proposed pricing for the service amounted to unfair cross-subsidization which would inhibit fair competition in the mobile sector. U.S.-invested mobile service providers remain concerned, however, that Chunghwa will continue to use unfair pricing practices to undermine the competition.

In the flat glass market, an internal investigation conducted at the request of the United States in 1997 by the Taiwan FTC found that while monopoly conditions existed, there was no evidence of predatory pricing in Taiwan's glass market. However, U.S. industry continues to believe the market for flat glass products in Taiwan is subject to monopoly conditions and predatory pricing practices designed to prevent market access for foreign imports.

In the cable TV market, the U.S. program providers believe the island's two dominant multi-system operators (MSOs) frequently collude to inhibit fair competition in the offering of their products. Control by the two MSOs of upstream program distribution has in the past made it difficult for U.S. providers of popular channels to negotiate reasonable fees for their programs. Taiwan regulators have thus far not done enough to prevent collusion and unfair trade practices in program distribution.

ELECTRONIC COMMERCE

Taiwan supports international efforts to facilitate global electronic commerce, and in 1998 unveiled electronic commerce policy guidelines which emphasize the primacy of the private sector in electronic commerce development. In practice, however, Taiwan's approach to electronic commerce and related issues is still evolving. In 1998, Taiwan authorities proposed amendment to the Taiwan Telecom Law which would have required an intrusive and time-consuming inspection and approval system for all hardware and software encryption modules. The amendment was deleted from the legislation, which subsequently passed in October. In the area of software sales, imports through traditional channels are subject to up to 1.3 percent in import duties. However, assessment of duties for software sold and downloaded over the Internet is still under discussion and no conclusion has been reached. For the present, the authorities are not collecting duties. In the area of online banking, securities transactions and other online transactions, the authorities are deliberating whether to establish a compulsory security standard controlling all transactions. The Ministry of Finance announced on December 24 that it is now considering allowing competing security standards in Taiwan.

OTHER BARRIERS

Market access for U.S.-made medical devices and pharmaceuticals has been one of the most contentious trade issues between the United States and Taiwan over the last two years. Taiwan has declared both the medical device and pharmaceutical sectors as areas warranting priority for development. Favorable measures have been introduced by Taiwan agencies to promote growth and technological development in these areas.

Taiwan does not discriminate against imported devices and drugs *per se*. However, Taiwan's national health insurance system acts effectively as the exclusive buyer for all medical products and services in Taiwan. As such, Taiwan authorities set prices for all drugs and medical devices on a *de facto* basis. It is this pricing system which frequently has the effect of discriminating against typically higher-quality and higher-priced pharmaceuticals and medical devices imported from the United States by limiting the reimbursement amount for certain products. Other regulatory barriers to medical device and drug imports are discussed in detail earlier in this report under "Standards, Testing, Labeling, and Certification".

Medical Devices: The Taiwan market has been an important one for the U.S. medical device industry. The Health Industry Manufacturers Association (HIMA) estimates the total market in medical technologies in Taiwan to be around $900 million. While U.S. device exports have been growing by 11 percent, HIMA believes discriminatory practices now threaten about two-thirds of U.S. exports, as well as prospects for substantial growth.

In 1996, the United States and Taiwan concluded an agreement on medical device pricing with specific measures to be achieved regarding national treatment, transparency, openness, predictability, and functionality. Taiwan has thus far not taken adequate measures to establish differentiated pricing for devices based on the relative value to technology (the "functionality" measure). Significant differences exist between the functionality of imported products and those made in Taiwan.

In December 1997, Taiwan's National Health Insurance Bureau (NHIB) introduced a diagnostic-related group case payment system for medical device products. This system assigns "generic" pricing, counter to the principle of creating value-based pricing for devices as stated in the agreement. This unexpected change in reimbursement systems was accompanied by drastic price cuts for foreign manufactured orthopedic products to levels nearly identical to those for domestically produced orthopedic products, thus eliminating the distinction between products based on quality and relative value. Cardiovascular products have recently been added to the diagnostic-related group system.

The change to generic rather than quality pricing for medical devices threatens to reduce dramatically the market for advanced foreign medical device products, at the same time that it provides ample profits to local Taiwan companies for development of more advanced medical devices. The United States is requesting that Taiwan adopt special measures that will recognize the value of the technology embodied in U.S. medical devices, or to otherwise adopt market-based approaches, such as patient co-payment, to permit adequate market access for higher quality, higher priced devices.

Pharmaceuticals: The U.S. pharmaceutical industry faces price controls similar to those encountered by U.S. medical device manufacturers. Under Taiwan's pricing system, producers of "generic" pharmaceuticals are reimbursed at a set percentage of the price set for the equivalent proprietary drugs. This system discriminates against patented and brand name pharmaceuticals that are typically imported by providing a higher rate of return on "generic" products that are produced in Taiwan. Since Taiwan producers do not have to pay for research, development and testing (but are entitled to a high price), they can offer "unofficial" discounts on their products and thereby enjoy a significant price advantage over brand name competitors when bidding on procurement contracts. Although Taiwan authorities have eliminated situations where generic products receive the same price as higher quality patented pharmaceuticals, U.S. companies remain concerned that in some cases, price differentials between generic and name brand products remain overly narrow.

In November 1999, Taiwan health care authorities lifted a one-year moratorium on price changes for pharmaceuticals negotiated in 1998 with the United States. In so doing, the authorities announced across-the-board price cuts of up to 10 percent, effective April 1, 2000, for nearly 10,000 items. Around 70 percent of the items slated for price cuts are manufactured domestically. Most of U.S. industry concern centers on future operation of the system, and the possibility that Taiwan may be considering further cost-saving measures such as global-budgeting and reference pricing.